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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-18-0021
PETITION TO ADOPT)	
RULES OF SMALL CLAIMS)	Alternative Language
PROCEDURE & MODIFY RULE)	for Proposed Small Claims Rules
101(b), JUSTICE COURT RULES)	
OF CIVIL PROCEDURE)	

BACKGROUND

These comments are submitted by two of the justices of the peace who conducted the pilot program for the proposed small claims rules, Judge Donald Watts and Judge Miles Keegan. Arrowhead Justice of the Peace Craig Wismer, Dreamy Draw Justice of the Peace Frank Conti, Kyrene Justice of the Peace John McComish, North Mesa Justice of the Peace, Cecil Ash, North Valley Justice of the Peace Gerald Williams, and White Tank Justice of the Peace David Osterfeld have also joined their colleagues in this pleading.

The primary problem with the proposed rules is that they require every small claims case to be set for a hearing.¹ What is worse, they require that

¹ Proposed Rule 7. There is an exception for alternative dispute resolution.

these hearings be set prior to the defendant even being served.² The apparent purpose for this requirement is that doing so will force justice courts to manage their small claims case calendars because setting every case for a hearing triggers a court event that will keep cases from falling through the cracks.

The Amended Petition states that other than civil lawsuits, small claims cases are the only type of justice court case where a defendant is not given a court date at the time of the complaint (e.g. civil traffic, criminal traffic, other misdemeanor cases).³ This argument is not persuasive because, other than in eviction cases, the defendant is actually present when a law enforcement agent or a constable serves either a ticket or a criminal summons. In contrast, the defendant is not present at a justice court front counter at the time a small claims case is filed.

The Committee on Improving Small Claims Case Processing has done time consuming work that is extremely worthwhile; but they are apparently convinced that the only way for justice courts to meet the small claims case

² “[T]he court will set a hearing date when the plaintiff files a complaint.” *Id.*

³ Second Amended Petition, Supreme Court No. R-18-0021, 7 (Sep. 19, 2018).

processing time standards is to adopt a system where hearings are set when the case is filed. Counterarguments on this point have been rejected.⁴

While the pilot program in Maricopa County established that such a program was extremely successful in causing cases to be dismissed, defaulted, or otherwise resolved in accordance with the applicable time standards, the experience of the litigants attempting to access the small claims system was not always positive. (See Attachment 2). Even so, the pilot program was a success because it identified problems with the proposed rules. Accordingly, we believe that there is a better alternative than what has been recommended.

RATIONALE FOR ATTACHED SMALL CLAIMS RULES

The attached rules were drafted with more than a single purpose. While compliance with the attached rules will also result in courts meeting case processing standards, the attached rules are designed to keep people from having to take multiple days off work because they are involved in a small claims case. In short, while the attached rules are designed to resolve cases outside of a courtroom, they also provide the necessary flexibility to hold litigated hearings, default hearings, and even mediations. It is a

⁴ “But here’s the thing: the new Small Claims Rules, that set a hearing at the time of the filing, are a success and are going to be adopted. ... There is no room to be nostalgic for the old system.” E-mail from Committee Chair to Maricopa County Justice Court Bench (Sep. 11, 2018, 4:14 p.m., Ariz. Time).

substantially better option than the one proposed. There are some additional unsolved problems with the proposed rules.

RESOURCES REQUIRED BY PROPOSED RULES

Virtually no analysis has been conducted concerning the judicial resources that will be required to implement the rules proposed by the Committee.⁵ For the two justice courts in Maricopa County that conducted the small claims pilot program, a part-time court clerk was hired just to support the pilot program. Maricopa County lacks the resources to hire equivalent staffing for the other 24 justice courts.

Even more significantly, the pilot program established that an unsustainable number of hearing officers would be required to man a small claims case processing system that automatically sets every case for a hearing. Our best estimate is that Maricopa County alone would need 125 - 150 volunteer hearing officers. Recognizing this, a recruitment effort was made on the west side of Maricopa County in connection with the pilot program. Over 80 people called expressing interest in attending an open house. Of that number, 40 people actually attended. However,

⁵ The Administrator for the Maricopa County Justice Courts attended the September 11, 2018 meeting of the Committee on Improving Small Claims Case Processing. During the Call to the Public section of the meeting, he asked the committee whether anyone had considered the resources that would be required to implement the proposed small claims rules. The answer he received was, "No." There was, however, a subsequent promise to look into what could be required.

approximately 58 people completed an application to become a hearing officer.

STATUTORY CHANGES WILL BE REQUIRED

Whether the Committee's proposed rules, the attached rules, or some combination of the two are adopted, statutory changes will be required. First, both the Committee's proposed rules and the attached rules make the filing of an answer by a defendant optional.⁶ However, the small claims statutes certainly envision an answer and make no provision for it to be optional.⁷ Second, although the Committee's proposed rules require the hearings to be set at the time the complaint is filed, the small claims statute states that a hearing cannot be set until after an answer has been filed.⁸

The third set area of statutory changes that would be required impacts the attached rules more than the Committee's proposed rules. It concerns permissible motions. Justice courts receive numerous motions in connection with small claims cases, most of which are not permitted by statute.⁹

⁶ Proposed Rule 10; Attached Rule 10.

⁷ "The time in which the summons shall require defendant to answer is in all cases twenty days, commencing from the date of service." A.R.S. § 22-514.

⁸ "On the filing of an answer by the defendant, the clerk shall set the action for hearing. The hearing shall be set for a date within sixty days of the filing of the defendant's answer. The clerk shall notify the parties of the time and place of the hearing." A.R.S. § 22-515(A).

⁹ "A motion for change of venue and a motion to vacate a judgment are the only motions allowed in a small claims action. These motions shall be heard only by a justice of the peace." A.R.S. § 22-505(B).

Perhaps the best example is a delay request, which is also not authorized by statute. The current language in A.R.S. § 22-505(B) should be replaced with something similar to, “The Small Claims Rules govern small claims procedures.”

CONCLUSION

Doing something quickly does not necessarily mean that it is also being done well. The Committee that proposed the small claims rules has done impressive work, but its’ focus has been nearly exclusively on time standards, often to the exclusion of anything else. We respectfully suggest that it is possible to have a system that is prompt without draining court resources and without forcing litigants to repeatedly take time off from work.

We must always remember that self-represented litigants seeking access to the small claims system expect to be able to participate in a process that is meaningful. Procedural fairness requires nothing less.

RESPECTFULLY SUBMITTED, this 25th day of September 2018.

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Attachments:

1. Alternate Set of Proposed Small Claims Rules
2. Feedback from Pilot Program Small Claims Hearing Officer

Copy Mailed To:

Hon. C. Steven McMurry, Chair
Committee on Improving Small Claims Case Processing
1501 West Washington Street, Suite 410
Phoenix, AZ 85007

Attachment 1

SMALL CLAIMS RULES

GENERAL PROVISIONS

Rule 1. Application and Interpretation.

a. **Title.** These rules are called the Small Claims Rules (“SCR”).

b. **Application.** These rules apply only to small claims cases.

c. **Small Claims Case.** A small claims case is an optional way to file lawsuit in a forum that is less formal and is more relaxed than a traditional civil case. A judicial officer can award only up to \$3,500.00 in damages, plus court costs, and (when appropriate) interest. Some types of cases cannot be filed in small claims court (e.g. lawsuits against a government agency, lawsuits for libel or slander). More information is available at A.R.S. § 22-503.

d. **Interpretation.** Judicial officers and parties to a case should use and should interpret these rules so that small claims cases are resolved in an inexpensive and prompt manner.

e. **No Jury, No Discovery, No Appeal.** There is no right to a jury trial and there is no right to discovery (e.g. depositions, requests for production of documents) in a small claims case. There is also no right to appeal the decision of the judicial officer who hears the case. A.R.S. §§ 22-504(B), 22-516(B), 22-518 & 22-519.

Rule 2. Computing Time. Time is measured in calendar days, with a few exceptions. In calculating any period of time specified or allowed by these rules, the day of the event is not counted. Saturdays, Sundays, and legal holidays are counted, unless the day to take action falls on a day the court is closed. *For example, although a defendant has 20 days to file an answer, a defendant served with a small claims complaint on November 2, 2018 would have until November 26, 2018 to file an answer, because both Thanksgiving and the Friday after Thanksgiving are court holidays.*

Rule 3. Parties to the Case

a. **Parties.** A party is anyone who files a small claims case or anyone against whom a claim is made in a small claims case. A party can be an individual, a marital community, a corporation, a partnership, or another legal entity.

b. **Plaintiff.** A plaintiff is the party who files the small claims case. The plaintiff must be the person who was actually damaged. For example, a person generally cannot file a case on behalf of someone else.

c. **Defendant.** A defendant is the party who has been sued.

d. **Responsibilities of the Parties.**

(1) **Use of Correct Legal Name.** Both parties must use their legal name when filing or responding to a small claims case. Each defendant must be sued by their correct legal name.

(2) **Updated Information.** Both parties must provide their mailing address, their phone number, and their e-mail address to the court.

(3) **Conduct.** Parties and witnesses who appear in court must conduct themselves in an orderly, courteous, and dignified manner.

(4) **Documents.** If a party files a document with the court, then that party must mail or deliver it to the other party.

(5) **Accommodation Requests.** If a party requests the assistance of an interpreter, or needs some other type of reasonable accommodation, then they should notify the court as soon as is possible; but not later than 5 days before any scheduled hearing or mediation. Parties may not use a friend or a family member as a language interpreter.

II. BEGINNING A SMALL CLAIMS CASE

Rule 4. Complaint. A small claims case begins when a plaintiff files a complaint against a defendant. The complaint must legibly and briefly state the factual basis of the plaintiff's claim. The complaint must also request a specific amount of money to be paid by the defendant to the plaintiff.

Rule 5. Summons. A summons is a document prepared by the court that gives instructions to the defendant.

Rule 6. Service of the Summons and Complaint. The plaintiff must serve the summons and the complaint on the defendant.

Rule 7. Time and Method of Service. Service of process for small claims cases is governed by A.R.S. § 22-513. The plaintiff may serve a business by serving that business' statutory agent.

a. **Mail.** The plaintiff may serve the defendant by either registered or certified mail, "return receipt requested." The plaintiff can establish that the defendant was

served by filing with the court either the signed card indicating that the defendant signed for the certified mail or a receipt printed from the postal or delivery service's website.

b. **Personal Service.** The plaintiff may also serve the defendant by using a process server, a constable, or a sheriff's deputy.

c. **Deadline for Proof of Service.** The plaintiff must provide proof of service to the court not later than 45 days from the day the complaint is filed.

Rule 8. Dismissal for Lack of Service. On its own motion, the court shall dismiss a complaint as to any defendant who has not been served with the summons and complaint within 45 days after the complaint was filed.

III. RESPONDING TO A SMALL CLAIMS CASE

Rule 9. Answer. A defendant's written response to a complaint is called an answer. The answer must include a short factual response to the allegations in the plaintiff's complaint. A.R.S. § 22-514.

Rule 10. Deadline for Response. The defendant must file either an answer or a request for hearing within 20 days of being served with the summons and complaint. If the court requires an answer, then the defendant must either file an answer or risk being held in default.

Rule 11. Counterclaims.

a. **Definition and Deadlines.** A counterclaim alleges that the plaintiff owes the defendant money. The Defendant must file a counterclaim within 20 days of being served with the summons and complaint. The amount of the counterclaim is also limited to \$3,500.00. The Plaintiff must file a reply to the counterclaim within 20 days of receiving it. A.R.S. § 22-517.

b. **Types of Allegations Allowed.** The subject matter of the counterclaim must directly relate to the same contract or event that is the subject of the plaintiff's complaint. *For example, if a tenant files a small claims case alleging that their landlord failed to return their security deposit, the landlord could then file a counterclaim alleging that the damages to the rental property exceeded the amount of the security deposit. However, if the landlord wants to also allege that this same tenant damaged his car, then that would most likely not be a proper counterclaim and should instead be a separate lawsuit.*

IV. MOTIONS

Rule 12. Requirements for Motions. A motion is a request from a party that a justice of the peace take some type of action. Written motions must state facts

and reasons in support of the request and must be mailed to the other party. Any opposing party has 10 days after receiving the motion to file a response with the court.

Rule 13. Permissible Pre-Hearing Motions.

a. **Amendments.** A plaintiff can amend their complaint prior to a hearing or a mediation being set. A defendant can amend their counterclaim prior to a hearing or a mediation being set. Amendments to add an additional party are not allowed.

b. **Change of Venue.** A defendant may file a motion for change of venue, if the defendant believes that the case has been filed in the wrong justice court, within 20 days of being served with the summons and complaint. A.R.S. § 22-505.

c. **Continue.** Either party may file a motion to continue either a hearing or a mediation. Unless an emergency is present, the party seeking the delay must file the motion not later than 20 days prior to the scheduled court date. In the event of an emergency, court staff will make an attempt to contact the opposing party to determine whether there is an objection to the delay request.

d. Default.

(1) If the defendant has been served, but has not timely filed an answer, then the plaintiff may file a motion for a default judgment. A defendant may also file a motion for default judgment against a plaintiff who has not timely responded to a counterclaim.

(2) Any motion requesting a default judgment must attach documents establishing the factual basis for the amount being requested.

(3) Any plaintiff's motion requesting a default judgment must comply with the federal Servicemembers Civil Relief Act and must include a statement stating whether the defendant is on active federal military duty.

(4) The failure to seek a default judgment can result in the complaint being dismissed, in accordance with Rule 16.

e. **Judgment on the Pleadings.** If the defendant files an answer admitting a debt, then the plaintiff may file a motion requesting that a judgment be entered.

f. **Notice of Settlement; Dismissal by Plaintiff.** The parties may file a stipulation to dismiss the case if it has settled. A plaintiff may file a motion to dismiss the complaint any time prior to the hearing or mediation.

g. **Objection to Hearing Officer.** A party may request that a justice of the peace, rather than a hearing officer, decide their case. A party must make this

request in writing and at least 15 days before the scheduled hearing. A.R.S. § 22-506.

h. Transfer to Civil Division. Either party may request that a small claims case be transferred to the civil division of a justice court, if done at least 10 days prior to the time set for a hearing or mediation. A.R.S. § 22-504.

i. Motions Requiring Transfer to Civil Division. If the Defendant files a motion requesting that the case be dismissed for any reason other than settlement (e.g. lack of jurisdiction, failure to state a claim, improper defendant) prior to a hearing or mediation, then the case shall be transferred to the civil division of the justice court.

V. CASE MANAGEMENT

Rule 14. Setting the Court Date. When the court receives either the defendant's answer or the defendant's request for a hearing, the court shall set the case for either a small claims hearing or for a mediation. This court date shall be set for a date within 60 days of the defendant's filing. A.R.S. § 22-515.

Rule 15. Mediation. Instead of or in addition to a small claims hearing, a court may set the case for a form of alternative dispute resolution or mediation.

Rule 16. Dismissal by Court When Answer Required.

a. The court shall have a case management system that alerts a justice of the peace to cases when the following events have occurred:

- (1) The plaintiff has provided proof that the defendant has been served,
- (2) The defendant has not filed a timely answer, and

(3) The plaintiff has failed to seek a default judgment within 45 days of the date that the defendant's time to file an answer has expired.

b. The court shall dismiss complaints meeting the three criteria in Rule 16 (a). A court may send a written warning notice to the plaintiff prior to doing so.

Rule 17. Status Hearing for Courts Not Requiring An Answer. If the plaintiff has provided proof that the defendant has been served, and the defendant has not filed any timely response, then the court shall set the case for a status hearing.

VII. HEARING PROCEDURES

Rule 18. Small Claims Hearing.

a. **Role of Judicial Officer.** The judicial officer conducting the hearing must do so in a manner that both parties have an opportunity to present their evidence. Formal rules of evidence and procedure do not apply. A.R.S. § 22-516.

b. **Role of Parties.** Both the plaintiff and the defendant should come prepared to testify and should bring any relevant witnesses, documents, or photographs that they want the judicial officer to consider in deciding their case.

c. **Appearance by Telephone or Video Link.** Either party may request to appear, or may request that a witness appear, by telephone or by video. Any such request must be submitted at least 20 days before the scheduled hearing and must be mailed to the opposing party. If a party to a case is going to appear remotely, then that party must attach to the request any documents, photographs, or other evidence it wants the court to consider.

Rule 19. Default Hearings. A court may set a case for a default hearing if it believes that the documents present in the case file do not adequately establish proof of the claimed debt.

VIII. SMALL CLAIMS JUDGMENTS

Rule 20. Judgment. A judgment is the final signed written order from the court that documents the decision made in the case. A court, on its' own or upon request of a party, can correct a clerical or a mathematical mistake in the judgment.

Rule 21. Motion to Vacate Judgment.

a. **Grounds.** A party may file a motion asking the justice of the peace for relief from a small claims judgment for one or more of the following reasons:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Fraud, misrepresentation, or other misconduct of the opposing party;
- (3) The judgment is void;

(4) The judgment has been satisfied, released, or discharged; or it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer fair;

(5) The judgment was entered in violation of the Servicemembers Civil Relief Act; or

(6) Any other reason justifying relief.

b. Timing and Impact of Motion.

(1) A motion made under this rule must be made within a reasonable time, and if the reasons stated are in either Rule 19(a)(1) or Rule 19(a)(2), then no more than 6 months after the date of the judgment.

(2) A pending motion does not affect the judgment's finality or suspend its' operation. *For example, a defendant cannot stop a garnishment action merely by filing a motion to vacate a judgment.*

Attachment 2

Small Claims Hearing Officer Pilot Feedback Form (Manistee Justice Court – 12 Sept 2018 Initial Hearings)

Do the calendars seem rushed?

The scheduling done (1-2 cases every 15 minutes) seemed to work very well. This is much better than scheduling a bunch of cases on the hour, as is done in other courts.

Is there too much extra time between calendar settings?

No. Even if there is a bit of extra time, I would rather have that than being too rushed, and ending up behind schedule so that folks have to wait longer than necessary.

Approximately what percentage of cases have settled on the day of the hearing?

There were originally 15 initial hearings listed on the docket:

- 5 already had executed Notices of Voluntary Dismissal in EDMS, so should not have been on the docket
- 3 had no service on defendant
 - For 2 of these, plaintiff had a signed Notice of Voluntary Dismissal that was not yet in EDMS
 - For the final case, plaintiff was intending to voluntarily dismiss, but didn't have the case file with her that she wanted to review before executing form, so was given an extension
- 1 had invalid service that was not done within 20 days (filed 20 July; service 28 August)
- 2 cases with proper service resulted in default judgment
- 2 cases with both parties present resulted in judgment agreed to by defendant
- 1 case was set over because it was too complex to have a final hearing in the time allotted, and also needed a Spanish interpreter (NOTE: The court was not aware of a need for an interpreter until the defendant showed up and requested one, and Language Line had to be used for the initial hearing.)
- 1 case (final case on docket) resulted in final hearing being held immediately after initial hearing

Any issues/confusion reported by litigants?

Not to me on this date.

Other general comments

1. In the past, the worksheets that need to be filled out for each case had had the top information already completed (e.g., names, case #). In this case that did not happen, and that creates a bunch of extra writing. It is very much appreciated when that can be done, as it is a time-saver for the hearing officer.
2. As I have said in previous evaluations, having cases scheduled where there has been no service is a waste of time, both for the judge/hearing officer and for the plaintiff. That is

something that can be addressed and dealt with by court staff. If there has been no documented service, I believe something like this should occur:

- 25 or 30 days after the date the complaint was filed with the court: If no service has been filed with the court, the court should send a letter to Plaintiff, giving 10 days to request an extension and obtain a new summons.
 - If the Plaintiff files for that, 30 days will automatically be granted to attempt service. (There could also be a process set up for automatic dismissal of the case if the court does not receive evidence of service by some date---perhaps 5 days after the 30-day period has expired.)
 - If nothing is received by the court in 10 days, the case is automatically dismissed without prejudice (by court staff, based on the judge's delegated authority).

If a procedure such as I am recommending had been followed here, there would have only been 6 initial hearings scheduled.

3. On this particular date, there were problems with both computers in the hearing room. Fortunately, the first two scheduled cases already had dismissals filed, so there was time to deal with this issue and staff was able to successfully resolve it so that other hearings could proceed as scheduled. I would suggest that it might be advisable for court staff, prior to hearings being held, to turn on the computers and make sure the FTR is working, and that EDMS can be accessed.